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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,600	01/22/2002	Scott M. Partridge	279.124US3	8302
21186	7590	12/17/2003	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EVANISKO, GEORGE ROBERT	
		ART UNIT	PAPER NUMBER	
		3762	6	
DATE MAILED: 12/17/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/054,600	Cn PARTRIDGE ET AL.	
<b>Period for Reply</b>	Examiner	Art Unit	
	George R Evanisko	3762	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>14 October 2003</u> .			
2a) <input type="checkbox"/> This action is FINAL.                    2b) <input checked="" type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>72-77 and 83-93</u> is/are pending in the application.			
4a) Of the above claim(s) <u>88-93</u> is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>72-77, 83-87</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).			
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
* See the attached detailed Office action for a list of the certified copies not received.			
13) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.			
a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.			
<b>Attachment(s)</b>			
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .		6) <input type="checkbox"/> Other: _____	

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group I, claims 72-77 in Paper No. 5 is acknowledged.

Newly submitted claims 88-93 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 88-93 are a subcombination of the combination claims 72-77 and 82-87. The combination as claimed does not require the particulars of the subcombination, the combination does not require the tine to be placed in the ventricle, the subcombination as claimed does not require coupling the lead body to a pulse generator, but only coupling the conductors to a pulse generator.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 88-93 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 87 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 87 is a duplicate of claim 86 and should be canceled or the claim dependency changed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 72-77 and 83-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rutten (6148238) in view of Rubin (5476502).

Rutten discloses the claimed invention having a defibrillation electrode in the ventricle with conductive tines for sensing and pacing, with the conductive tines proximate (Websters definition, "approximate", "close" or "very near") to the apex, except for the defibrillation electrode being a defibrillation electrode tip. Rubin teaches that it is known to provide the defibrillation electrode as a defibrillation electrode tip within the apex of the heart to deliver defibrillation energy to minimize the threat of injury to heart tissue and to prevent electrolysis of the blood. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillation tined electrode as taught by Rutten, with a

defibrillation electrode as a defibrillation electrode tip within the apex of the heart as taught by Rubin, since such a modification would provide a defibrillation tined electrode with a defibrillation electrode as a defibrillation electrode tip within the apex of the heart to deliver defibrillation energy to minimize the threat of injury to heart tissue and to prevent electrolysis of the blood.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703 306-4520.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

George R Evanisko  
Primary Examiner  
Art Unit 3762  
12/15/03

GRE  
December 15, 2003